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DA 98-1485

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-229
Table of Allotments,)	RM-9100
FM Broadcast Stations.)	RM-9231
(Warrenton and Enfield, North Carolina)	
and La Crosse and Powhatan, Virginia) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 22, 1998

Released: July 31, 1998

By the Chief, Allocations Branch:

1. At the request of MainQuad, Inc., the Commission has before it the Notice of Proposed Rule Making, 12 FCC Rcd 18065 (1997), proposing the reallocation of Channel 297C2 from Warrenton, NC, to LaCrosse, VA, as the community's first local aural service, and the modification of Station WXNC's construction permit to specify LaCrosse as its community of license. Comments and reply comments were filed by the petitioner and by Patricia B. Wagstaff ("Wagstaff"), licensee of Station WFXQ, Chase City, Virginia.² In addition, the petitioner filed a counterproposal.³ Sinclair Telecable, Inc. ("Sinclair"), licensee of Station WCDX(FM), Mechanicsville, Virginia, filed reply comments in response to the counterproposal.

2. In its counterproposal, petitioner requests the substitution of Channel 297A for Channel 297C2 at Warrenton, the reallocation of Channel 297A to Powhatan, Virginia, and modification of its Station WXNC construction permit to specify operation on Channel 297A at Powhatan. As part of this counterproposal, the petitioner also proposes the allotment of Channel 297A to Enfield, North Carolina. This counterproposal would provide each community a first local aural service. The petitioner states that it will apply for Channel 297A at both communities, if allotted. Petitioner refers to the fact that shortly after it filed its petition for rule making it found that the Commission, although finding Powhatan a community for allotment purposes, granted the mutually exclusive proposal to allot an FM channel to Goochland,

¹ The communities of Enfield, North Carolina, and Powhatan, Virginia, have been added to the caption.

² Wagstaff, in her comments, opposes the reallocation of Channel 297C2 to La Crosse. In light of the withdrawal of this proposal, her comments are moot and thus will not be discussed.

³ Public Notice of the counterproposal was given on March 2, 1998, Report No. 2259, and a corrected Public Notice was issued on March 6, 1998, Report No. 2259-CORR.

Virginia, based on its larger population.⁴ It believes that Powhatan is more deserving of its first local aural service than La Crosse based on its larger population (900 vs. 549 persons). According to petitioner, Powhatan has a local newspaper, post office, fire department, library, rescue squad, a Planning and Development Office, numerous religious institutions, businesses, and social and civic organizations, including a Chamber of Commerce, Moose Lodge, 4-H Clubs and Jaycees. Powhatan is also the seat of Powhatan County.

3. Petitioner notes that Enfield is an incorporated town with a 1990 Census population of 3,082 persons and is governed by a Mayor and Board of Commissioners. It has its own library, public and private schools, police and fire departments, and rescue squad. In addition, Enfield has numerous businesses, including car dealerships, pharmacy, banks, farm equipment company, fertilizer company and restaurants. Petitioner states that their medical needs are attended to by two local doctors and one dentist.

4. Petitioner states that the grant of its counterproposal would better serve the public interest than the retention of Channel 297C2 at Warrenton. First, it would permit two communities to receive their first local transmission service while not depriving Warrenton of its sole such service as it will retain service from daytime-only AM Station WARR. Second, it would enable Station WXNC, as a Powhatan station, to provide service to 197,245 persons, as opposed to the 146,729 persons possible as a Warrenton station. Third, the allotment at Enfield will enable a station to provide service to 77,097 persons. Therefore, it states that the two facilities would provide service to a combined total of 274,342 persons. Finally, since Station WXNC is an unconstructed permit, it states that there is no service which the residents of Warrenton have come to rely upon and the removal of the channel will not result in the creation of any white or gray areas.

5. In its reply comments, Sinclair argues that petitioner's counterproposal is a "thinly disguised manipulation" of the Commission's change of community policies to enable Station WXNC to migrate from rural Warrenton to the Richmond market and thus should be rejected. Sinclair contends that "common sense and economic reality" dictate that petitioner will move as close to Richmond as possible, thus increasing the value of Station WXNC. To demonstrate this belief, Sinclair states that petitioner originally proposed to move from Warrenton to La Crosse, which would have represented a move from one rural community to another. However, when filed, as a counterproposal and thus not subject to competing proposals, the reallocation of Channel 297A to Powhatan, a community only 20 miles from Richmond, Virginia. While the petitioner states that the allotment, as proposed herein, would result in the coverage of only 3% of the Richmond Urbanized Area with a city-grade signal, Sinclair speculates that the petitioner will file an application specifying a transmitter site ten miles east toward Richmond and well inside the Urbanized Area. Sinclair states that use of such a site, coupled with directionalization of its antenna to overcome a short-spacing to Station WRQX, Washington, D.C., will enable Station WXNC to include 74% of Richmond's population and 70% of the Urbanized Area

⁴ See Powhatan and Goochland, Virginia, 12 FCC Rcd 3191 (1997).

residents within its primary service contour. Further, it states that no evaluation of petitioner's intent will be made by the Commission in processing its Form 301 seeking a construction permit after the rule making. Therefore, while it agrees that the Commission must proceed in accordance with its defined rules, it argues that where proposals involve manipulation of Section 307(b) policies, "real world considerations and common sense" should be applied to "reject such gamesmanship."

6. Sinclair also questions Powhatan's status as a community for allotment purposes, requesting that the Commission take into account the "flimsiness" of the demographic data relied on in Powhatan and Goochland, Virginia, supra. It states that, according to materials obtained by Benjamin Miles ("Miles"), Sinclair's Vice-President and General Manager of Station WCDX, the list of institutions, such as the schools and Chamber of Commerce, accredited to Powhatan in that proceeding are, for the most part, county-based institutions which identify with the county rather than the unincorporated place itself. It argues that Powhatan does not "effectively" exist as an independent community. Regardless of its community status vis-a-vis Goochland or other comparable hamlets, it contends that this "crossroads" is not independent of Richmond, the nation's 56th radio market. It describes Powhatan as a bedroom suburb/exurb of Richmond, and claims that the majority of its residents both commute to work and recreate in Richmond. According to Sinclair, Richmond has an Urbanized Area population of 589,198 persons, and where, according to the latest Broadcasting Yearbook, some 31 stations already compete in the market.

7. As an initial matter, we find that Powhatan is a community for allotment purposes. We do not believe that Sinclair has provided evidence sufficient to revisit this earlier determination in Powhatan and Goochland, Virginia, supra. While it may be that not every organization which was attributed to Powhatan is dedicated solely to the community itself as opposed to encompassing the entire county, we continue to believe that Powhatan has sufficient indicia to find that it is a community for allotment purposes. According to the information supplied by Sinclair, Powhatan, the seat of Powhatan County, is home to both local and county-wide organizations and businesses. Public education at Pocahontas and Powhatan Elementary Schools, Pocahontas Middle School, Powhatan High School and Powhatan Vocational & Technical Center, is provided by Powhatan County but the community does have several private schools, Blessed Sacrament and Huguenot Academy. It also has a number of businesses with Powhatan addresses, such as the Powhatan Animal Hospital, Deer Creek Veterinary Service, Powhatan Family, a medical care facility, Central Virginia Bank, McGray-Morgan, Inc., Daniel's Heating and Refrigeration Corp., Cozy Acres Family Campground, Cajo's Place Restaurant & Lounge, Flat Rock Supermarket, and Oakleigh Arabian Farm. Further, we note that while the Chamber of Commerce is county-wide, we note that according to the information supplied by Sinclair, the 1997 Board of Directors consists almost entirely of businesses located within the community of Powhatan. The community is also home to almost fifty churches. Powhatan also has a volunteer fire department. Finally, the data indicates that, for the county as a whole, more people are employed outside the county than within it. However, these figures are for the county and not specific to Powhatan itself. Therefore, since there appear to be a number of businesses and county government operations located within the community, we do

not feel that the employment figures are dispositive as to community status. Finally, we note that Powhatan has a weekly newspaper, Powhatan Today.

8. Next we turn to Sinclair's supposition that, if granted, petitioner will submit an application specifying a site different from that set forth herein which will enable the station to include 74% of Richmond's population and 70% of the Urbanized Area residents within its primary service (60 dBu) contour. Based on this information, Sinclair argues that Station WXNC will not be a Powhatan station but, in reality, another Richmond station. In Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10342 (1995), the Commission stated that a first local service preference would be questioned where a station would cover 50% or more of an Urbanized Area with a 70 dBu signal. Here, according to the staff engineering study, Station WXNC, as a Powhatan station, would reach 1% of the Richmond Urbanized Area with its 70 dBu signal.⁵ As such, the policy set forth in Headland, Alabama, and Chattahoochee, Florida, *supra*, is not applicable in this situation. We see no justification in this proceeding to expand this policy on the basis of speculation that Station WXNC may file an application that would expand its service into the Richmond Urbanized Area.

9. Based on the information before us, we believe the public interest would be served by substituting Channel 297A for Channel 297C2 at Warrenton, reallocating Channel 297A to Powhatan, and modifying Station WXNC's construction permit accordingly. The reallocation will provide Powhatan with its first local aural service, thus fulfilling priority (3) of the Commission's allotment priorities, while also enabling Station WXNC to provide service to an additional 26,295 persons.⁶ The retention of Channel 297C2 at Warrenton would fall under the fourth allotment priority. Further, we find that the reallocation of Channel 297A to Powhatan will not result in the creation of any unserved or underserved areas as Warrenton will continue to receive at least five fulltime services. We note that if Station WXNC were constructed at Warrenton it would provide service to 153,705 persons. However, while we are concerned with the loss of service to Warrenton, Station WXNC represents only a potential service since the station has never been on the air and thus does not raise the same level of concern. We also find that the public interest would be served by allotting Channel 297A to Enfield, North Carolina, as the community's first local aural service.

10. Channel 297A can be allotted to Powhatan in compliance with the Commission's minimum distance separation requirements with a site restriction of 10 kilometers (6.2 miles) southeast to avoid short-spacings to Stations WRQX, Channel 297B, Washington, D.C. and WUMX, Channel 298A, Charlotte, Virginia. Channel 297A can be allotted to Enfield, North Carolina, with a site restriction of 1.7 kilometers (1 mile) northwest, to avoid a short-spacing

⁵ According to the staff engineering study, Station WXNC's 60 dBu signal would penetrate only 25.5% of the Richmond Urbanized Area.

⁶ The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

to Station WNCT-FM, Channel 300C, Greenville, North Carolina.⁷

11. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 14, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Enfield, North Carolina	297A
Warrenton, North Carolina	--
Powhatan, Virginia	297A

12. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of MainQuad, Inc., for Station WXNC, Warrenton, North Carolina, IS MODIFIED to specify operation on Channel 297A, in lieu of Channel 297C2, and to specify Powhatan, Virginia, in lieu of Warrenton, North Carolina, as its community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

13. A filing window for Channel 297A at Enfield, North Carolina, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

14. IT IS FURTHER ORDERED, That the proposal of MainQuad, Inc., to reallocate Channel 297C2 from Warrenton, North Carolina, to La Crosse, Virginia, IS DISMISSED.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

⁷ The coordinates for Channel 297A at Powhatan are 37-28-02 North Latitude and 77-51-10 West Longitude. The coordinates for Channel 297A at Enfield are 36-11-09; 77-41-40.

16. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau